



BrightonSM

City Council Study Session

Tuesday, May 27, 2014

5:30 p.m.

City Hall 6th Floor Study Session Room

7:00 Special City Council Meeting

Dinner Provided : Applebee's

**Approx.
Time**

ITEMS

Representative

Joint Meeting with the Planning Commission

5:30

Tour of Oil and Gas Facility

7:15

POLICY ITEMS

7:30

EXECUTIVE SESSION

**For a conference with the City Attorney for the purpose
of receiving legal advice on specific legal questions under
C.R.S. Section 24-6-402(4)(b)
Oil and Gas**

8:30

STUDY SESSION ITEMS

Misc. Code Amendments—E-Cigarettes and Marijuana
Urban Agriculture Code Amendment

Holly Prather
Holly Prather

9:15

ADMINISTRATIVE ITEMS

Public Information Office Update

9:30

EXECUTIVE SESSION

**For a conference with the City Attorney for the purpose
of receiving legal advice on specific legal questions under
C.R.S. Section 24-6-402(4)(b)
Leases**

Mayor

Richard N. McLean

Mayor Pro-Tem

Kirby Wallin

Council Members

Ward I

Joan Kniss

Ward II

Rex Bell

Cynthia A. Martinez

Ward III

Lynn Baca

Ken Kreutzer

Ward IV

J.W. Edwards

Mark Humbert

*The City of Brighton's purpose is to provide essential services and progressive leadership to
enhance the quality of life for the community.*

500 South 4th Avenue
Brighton, CO 80601
303-655-2056
nhoel@brightonco.gov

CITY OF BRIGHTON

COMMUNITY DEVELOPMENT DEPARTMENT MEMO

TO: City Council and Planning Commission, through
Manuel Esquibel, City Manager

FROM: Aja Tibbs, Long Range and Historic Preservation Planner

REVIEWED BY: Holly Prather, AICP, Community Development Director

PREPARED: May 8, 2014

MEETING DATE: May 27, 2014

SUBJECT: Miscellaneous Code Amendments

BACKGROUND:

Miscellaneous issues often arise as topics of discussion by the council which may need to be addressed with additional regulation. Below are two items the council has questioned, discussed, or reviewed which may need additional regulation. Further details related to these items will also be provided at the study session meeting.

ELECTRONIC VAPORIZERS (AKA E-CIGARETTES):

Electronic cigarettes are a new use which has grown in popularity over the last year. Because it is a new use, there are no regulations in the current land use code which address how it will be regulated. In the interim, staff has interpreted the use to be similar to tobacco sales. However, the code should be revised to specifically address the use. In doing so, staff would like direction on how to proceed.

Electronic vaporizers are devices that simulate the act of smoking by vaporizing a liquid that is then inhaled. Examples of electronic vaporizers include, but are not limited to, electronic cigarettes, electronic cigars, and personal vaporizers. The liquid cartridges may contain a variety of contents. There are liquids which contain nicotine (cigarettes) or THC (marijuana), but also liquids without either one (just flavored).

The Centers for Disease Control (CDC) recently reported significant increases in calls to poison centers related to e-cigarettes and the U.S. Federal Drug Administration (FDA) announced last month that it will begin the process of writing new regulations governing the fast-growing e-cigarette industry. These new rules are expected to regulate e-cigarettes as tobacco products, placing them under the same requirements as cigarettes. The director of the FDA's Center for Tobacco Products was recently quoted as saying, *"When finalized [the proposed regulations] would result in significant public health benefits, including through reducing sales to youth, helping to correct consumer misperceptions, preventing misleading health claims and preventing new products from entering the market without scientific review by FDA."*

Because the current code does not address e-cigarettes, legal counsel has recommended that certain amendments to the code be considered by the Council through the ordinance process. The recommendation is that it be an allowed use similar to that of tobacco sales in the General Retail and Sales Services (C-3) Zone district and a conditional use in the Restricted Retail and Services (C-2), Downtown (DT), Mixed Use Neighborhood Center (MUNC) and the Mixed Use Commercial Center (MUCC) zone districts, which would only require administrative review and approval. In addition to revising the table of uses, staff has been advised by the City Attorney to additionally modify *Article 8-44. Smoking Prohibited* to address that the use of electronic vapors be restricted in the same manner as smoking tobacco products, including certain modifications to definitions in that Article.

The federal rule-making process before the FDA will take months and possibly, years to complete. When those regulations are finally adopted, Staff will review them and make recommendations for additional changes to the code, if warranted.

Requested Staff Direction:

- Should city staff continue to internally interpret this new use, or modify the code to provide clarification?
- If proceeding with a code amendment, should city staff draft new regulations to restrict electronic vapors in the same way as the smoking and sale of tobacco products?

RECREATIONAL AND MEDICINAL MARIJUANA HOME GROW OPERATIONS:

In March of 2011, after much discussion and fact-finding regarding Amendment 20 to the Colorado Constitution, the City Council adopted Ordinance No. 2086, prohibiting the licensing and operation within the City of *Medical Marijuana Centers, Optional Premises Cultivation Operations and Medical Marijuana-Infused Products Manufacturers*. Similarly, in response to Amendment 64 to the Colorado Constitution, in July of 2013, the City Council adopted Ordinance No. 2156, prohibiting the licensing and operation with the City of *Retail Marijuana Stores, Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, and Marijuana Testing Facilities*.

Notwithstanding these prohibitions, both medical marijuana and marijuana for personal use will still be legally present in the city of Brighton. Thus, at the time the ordinances were adopted by the Council, Staff indicated that it would be necessary to amend certain provisions of the Municipal Code to address public health, safety and welfare issues associated with the legalization of personal marijuana and medical marijuana use.

City Staff has monitored generally what other municipalities have adopted and the scope of those regulations ranges from minimal to extensive. Adding to the challenge is the reality that certain provisions in the Amendments are not clearly defined, causing confusion with the interpretation and the extent of regulation. In general, municipalities have developed regulations that would:

- Limit the size of personal home grows;
- Limit the number of plants per household regardless of the number of residents;
- Dictate the minimum space needed per plant;
- Restrict indoor grows to specific types of lighting;
- Address water usage and electricity;
- Further define ambiguous phrases from the Amendments;

- Address general time, space manner and number considerations;
- Address home grows in multi-family residences;
- Address landlord/lease matters;
- Clarify accessory uses;
- Include marijuana within its smoking prohibited regulations; and
- Miscellaneous matters such as: proper ventilation, storage, mold growth, odors, electrical hazards, inspection, and enforcement abilities.

Staff has worked with the City Attorney's office and received input from both the Police Department and Fire District on health, safety, welfare concerns, and has created a general framework ordinance.

Requested Staff Direction:

- Should city staff proceed to develop land use regulations to reasonably regulate marijuana home grow operations?
- Should city staff proceed to finalize an ordinance(s) for recommendation by the Planning Commission and for consideration and action by the City Council?

CITY OF BRIGHTON

COMMUNITY DEVELOPMENT DEPARTMENT MEMO

TO: City Council and Planning Commission, through
Manuel Esquibel, City Manager

FROM: Aja Tibbs, Long Range and Historic Preservation Planner

REVIEWED BY: Holly Prather, AICP, Community Development Director

PREPARED: May 6, 2014

MEETING DATE: May 27, 2014

SUBJECT: Urban Agriculture Code Amendment

BACKGROUND

The practice of urban agriculture has numerous benefits. It helps to provide un-processed, natural foods within their growing season. It creates gardens, green spaces and productive uses in often unused or abandoned areas. The physical act of gardening and animal keeping helps to reduce stress, burn calories, and create community with others. The consumption of local foods helps to develop a more sustainable environment by cutting transportation costs and reducing the toxins found in hormones, pesticides, and fertilizers needed for larger production farming. It is even a way to capitalize on eco-tourism and sustainable tourism, which is trending among younger families and professionals today.

For these reasons, staff is exploring the existing municipal code, the regulations of surrounding communities, and educational resources to determine what might be done to allow urban agriculture in the City of Brighton. However, doing it in a responsible and appropriate way is important to protect the health, safety, and welfare of our community.

PROPOSED CODE AMENDMENT CONSIDERATIONS

Micro-livestock is a term referencing small animals such as chickens, ducks, quail, and rabbits, but may also include livestock breeds that are smaller than average such as dwarf goats and cows. Staff has not received any public interest in raising larger breeds, so our scope of research and regulation is focused on bees and other small animals within primarily residential zone districts.

Small Animals

Currently, the municipal code allows up to four domestic ducks, rabbits, doves, or pigeons. Chickens, turkeys, geese and guinea fowl are not addressed. However, staff has historically interpreted the regulations to allow birds similar to ducks (such as female chickens and turkeys) to be permitted, while noisier animals (such as geese, toms and roosters) are considered a nuisance and prohibited. Care for these animals has historically been addressed under section 6-4-500 of the municipal code, which addresses that water, shelter, vet care, etc., shall be provided for all animals.

In general, other municipalities regulate small animals differently. The greatest variation can be found in the regulations of chickens, as many have amended their regulations to specifically permit hens within residential zones. Out of eight surrounding communities, four of them specifically permit hens (two of them also permit additional fowl) within city limits. Others regulate all poultry as livestock and limit them to agricultural or public lands. The municipalities that do permit chickens have regulations to address the concerns that might arise with fowl in urban and suburban environments. These regulations typically include a maximum number of animals, location, setbacks, and size of fowl coops and runs, cleanliness, prohibition of males (roosters and toms), care, off-site slaughter, and permitting or licensing requirements.

Based on this information, staff recommends proceeding with a code amendment to clarify that up to four hens are permitted for all single-family zone districts (R-1, R-1-A, R-1-B, R-2) with single family residential structures (attached units would not qualify). In addition, the amendment will clarify that roosters (male chickens), toms (male turkeys), and all geese and pea fowl, and guinea fowl are prohibited animals, because their volume levels are considered a nuisance to surrounding property owners. Because this code amendment is what has been historically enforced, additional regulations are not needed to ensure adequate care of the animals, or to enforce any violations should complaints be received. Staff feels that the process has already been established with previous use.

Apiculture (beekeeping):

It is important to first distinguish that apiaries are established for the purpose of keeping the common domestic honey bee (*apis mellifera*). A species which vastly differs from the wasp, yellow jacket or hornet. Unlike other species, their stinger is attached to their entrails and a sting will kill them instantly. In addition to providing a fresh and unprocessed sweetener, they help to pollinate a majority of our fruit and vegetables.

Apiaries are currently prohibited in all zone districts except the Agricultural Residential (A/R) zone district, which has a minimum lot size of 35 acres. There are no regulations to address the operation or act of this use type besides its listing in the table of uses.

Similarly to small animals, municipalities regulate this use differently. Again four municipalities permit the use, while four do not. (*Note: they are not necessarily the same four communities that permit fowl.*) Only one of those four requires a permit or license for the use, but all have regulations to address concerns. Regulation regarding beekeeping is generally more comprehensive and technically complex. They cover issues related to hive density, hive structure and design, access to a water source, queen selection, setbacks, location, and flyways.

Based on this information, staff proposes amending regulations to allow apiaries in all single family residential districts (R-1, R-1-A, R-1-B, and R-2) which have single family structures (attached units would not qualify). However, operation and maintenance regulations would need to be added to the code so that surrounding uses may be protected. Regulations would be developed to address reasonable requirements for all of the items above, but staff does not recommend requiring permit or licensing requirements. Instead, the regulations would be enforced similarly to other animal control regulations i.e., through regular city inspections and complaint submittals.

In summary, staff feels that the allowance of certain species of fowl, and honey bees can be perfectly suited for more urban and suburban environments provided that the proper regulations are applied to protect their surrounding environments. On the surface, these types of uses may be mislabeled and improperly assessed, but with adequate care they can provide our community with access to fresh food and environmental education.

ATTACHMENTS

- Surrounding municipal regulations table

DIRECTION STAFF IS REQUESTING

- Should city staff move forward with amending the municipal code to better clarify that small animals are allowed within city limits?
- Should city staff move forward with a code amendment to address beekeeping as an allowed use in residentially zoned areas?

Surrounding Municipality Regulations Related to Urban Agriculture

	Poultry	Permit/License	Apiculture	Permit/License
Arvada	5 Chickens & Turkeys	No	Yes	No
Aurora	Chickens only	Permit \$40	Yes	No
Broomfield	5 Chickens only	License \$25	No	N/A
Commerce City	No	N/A	No	N/A
Thornton	No	N/A	Yes	Permit \$30
Northglenn	No	N/A	No	N/A
Westminster	No	N/A	No	No
Wheat Ridge	All Types	No	Yes	No